THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26104 of 2000

06.04.2006

Between:

Chakali Istari

...Petitioner

Vs.

The Collector, (Survey & Land Records), Nizamabad District, Nizamabad and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.26104 OF 2000

ORDER:

The petitioner filed the instant writ petition assailing the Memo No.B1/2698/93, dated 21.09.1997, issued by the third respondent directing the petitioner not to cultivate the land admeasuring 2.33 hectares in survey No.1858 situated at Thimmapur village, Morthad Mandal in Nizamabad District. This court while admitting the writ petition passed orders on 27.12.2000 staying dispossession. Respondents 4 and 5, who are subsequently impleaded, have now moved application for vacating the said order. At that stage itself, the matter is heard finally and is being disposed of.

The case of the petitioner is that for over thirty years, he is in possession of the land in question. The Mandal Revenue Officer has also issued a certificate, dated 02.09.1993, to the effect that in the revenue records the land in survey No.1858 stand in the name of the petitioner by reason of a patta. However, the Mandal Revenue Officer issued impugned memo directing the petitioner not to cultivate the land as it is a Government land.

In the counter affidavit filed by the second respondent, it is stated that re-survey of Thimmapur village was taken up in 1980 and after completing the survey, new survey record was implemented in the year 1999-2000. As per the survey, the land in survey No.1858 was wrongly assigned to the petitioner and his father showing as Khata No.171/13. Through the survey, it was found that the land is a fallow land and no one was enjoying the property. Therefore, after conducting the spot inspection, the petitioner was advised not to cultivate the land and necessary steps were taken to correct the survey treating the land in survey No.1858 as Government Poramboke land. The allegation that the petitioner is in possession of the land is

denied. It is further stated that the petitioner failed to produce any document of possession at the time of re-survey.

In the counter affidavit filed on behalf of respondents 1 and 3, it is stated that the land in question is fallow land and it is not in possession of the petitioner. The allegation that the petitioner developed the land and is cultivating the land is denied. The allegation that he was granted patta is also denied. Though the counter affidavit is filed long back, the petitioner has not filed any reply affidavit denying the counter averments.

The learned counsel for the petitioner placed strong reliance on the certificate issued by the Mandal Revenue Officer on 02.09.1993. The certificate shows that as per the revenue records, the land in survey No.1858 stand in the name of the petitioner. It is the case of the respondents 1 to 3 that re-survey of Timmapur village is completed in 1999-2000 and at the time of survey, the petitioner did not produce any proof of possession nor he did produce any patta. Therefore, there are good reasons to infer that the petitioner was never in possession of the land and this writ petition is filed based on the certificate, dated 02.09.1993. The said certificate, which was issued prior to completion of survey, is of no avail in view of the fact that the land is fallow and it is recorded as such in the revenue records. Further, on 22.08.2005, this Court directed the learned Assistant Government Pleader to produce the relevant revenue records. Today, the learned counsel has produced before this Court Pahani for the year 2001-2002 showing that the land is Khariz Khata Government Poramboke. This would belie the contention of the petitioner.

It is also contended by the learned counsel for the petitioner that the petitioner is a landless poor person entitled for assignment of the land and his request can be considered. Respondents 4 and 5 also got impleaded taking the same plea as their applications are pending before the Mandal Revenue officer. Therefore, this Court is of considered opinion that the applications of the petitioner and respondents 4 and 5 should be considered for assignment of the land if they are landless and poor persons and are eligible for such assignment. The petitioner is permitted to make an application for assignment.

The writ petition is accordingly is disposed of. No costs.

(V.V.S.RAO,J)

06.04.2006
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